

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----X  
**NOVELLA JOHNSON,**

**Plaintiff,**

**-against-**

**ANSWER**

**07 CV 5805**

**CITY OF NEW YORK, METROPOLITAN  
TRANSIT AUTHORITY, MANHATTAN AND  
BRONX SURFACE TRANSIT OPERATING  
AUTHORITY, AND DAVID COLLUM**

**Defendants.**  
-----X

Defendant, David Collum, by his attorneys, answers the Complaint as follows:

1. Denies having knowledge or information sufficient to form a belief as to the truth or falsity of the averments in paragraph 1.
2. Denies having knowledge or information sufficient to form a belief as to the truth or falsity of the averments in paragraph 2 except denies that the MTA is an agency, employee or agent of the City of New York.
3. Denies the averment in paragraph 3 and avers that the MTA is a public benefit corporation duly organized under the Public Authorities Law of the State of New York (Pub. Auth. Law § 260 *et. seq.*).
4. Denies the averments in paragraph 4 and avers that the Transit Authority ("TA") is a public benefit corporation of the State of New York created and existing under the Public Authorities Law. MABSTOA is a statutory subsection of the TA (Pub. Auth. Law § 1203-a).

5. Denies the averments in paragraph 5 except admits that Mr. Collum is employed by MABSTOA, and that Plaintiff purports to sue him in his individual and official capacities.

6. Admits that Plaintiff purports to state a basis for jurisdiction under the statutes cited therein and refers the Court to those statutes for their true meaning and intent.

7. Admits that Plaintiff purports to state a basis for venue under the statute cited therein and refers the Court to that statute for its true meaning and intent.

8. Denies knowledge and information sufficient to form a belief as to the averment in paragraph 8.

9. Denies that Plaintiff was ever employed by the MTA and avers that MABSTOA and the MTA are distinct legal entities and separate employers, but avers that Plaintiff was employed by MABSTOA commencing on or about November 20, 1995 and that she is no longer employed by MABSTOA.

10. Denies the averment in paragraph 10.

11. Denies the averments in paragraph 11 except admits that Mr. Collum was not Plaintiff's immediate supervisor and normally did not have direct contact with Plaintiff.

12. Admits the averment in paragraph 12.

13. Denies the averments in paragraph 13.

14. Denies the averment in paragraph 14.

15. Denies the allegations in paragraph 15.

16. Denies the allegations in paragraph 16 except denies knowledge and information sufficient to form a belief as to the truth or falsity of Plaintiff's allegation that she was extremely distraught.

17. Denies the allegations in paragraph 17.

18. Denies the allegations in paragraph 18.

19. Denies the allegations in paragraph 19 except denies knowledge and information sufficient to form a belief as to Plaintiff's mental state and admit records reflect Plaintiff went to the hospital.

20. Denies the allegations in paragraph 20.

21. Denies the allegations in paragraph 21 except denies knowledge and information sufficient to form a belief as to Plaintiff's current ailments and/or purported disabilities.

22. Denies knowledge and information sufficient to form a belief as to Plaintiff's purported ailments and denies Plaintiff ever worked at the MTA, but avers that Plaintiff no longer works for MABSTOA.

23. Denies the allegations in paragraph 23 except admits Plaintiff filed an internal complaint against Mr. Collum as well as a complaint at the EEOC and refers the Court to those documents for their true content.

24. Denies the allegations in paragraph 24.

25. Denies the allegations in paragraph 25.

26. Denies the allegations in paragraph 26.

27. Denies the allegations in paragraph 27.

28. Denies the allegations in paragraph 28.

29. Denies the allegation in paragraph 29.

30. Denies the allegation in paragraph 30 except admits Plaintiff was advised she was being terminated.

31. Denies the allegations in paragraph 31.

#### **FIRST CAUSE OF ACTION**

32. With respect to paragraph 32, Defendant repeats his answers to paragraphs 1 through 31 as if fully set forth herein.

33. Denies the allegations in paragraph 33.

#### **SECOND CAUSE OF ACTION**

34. With respect to paragraph 34, Defendant repeat his answers to paragraphs 1 through 31 as if fully set forth herein.

35. Denies the allegations in paragraph 35.

#### **THIRD CAUSE OF ACTION**

36. With respect to paragraph 36, Defendant repeats his answers to paragraphs 1 through 31 as if fully set forth herein.

37. Denies the allegations in paragraph 37.

#### **FOURTH CAUSE OF ACTION**

38. With respect to paragraph 38, Defendant repeats his answers to paragraphs 1 through 31 as if fully set forth herein.

39. Denies the allegations in paragraph 39.

#### **FIRST AFFIRMATIVE DEFENSE**

40. Plaintiff fails to state a claim upon which relief can be granted

**SECOND AFFIRMATIVE DEFENSE**

41. All employment actions taken by Defendants affecting Plaintiff were lawful, non-discriminatory, and taken for legitimate business reasons.

**THIRD AFFIRMATIVE DEFENSE**

42. Defendants acted in good faith toward Plaintiff at all times relevant herein, without any intent to unlawfully injure or discriminate against her.

**FOURH AFFIRMATIVE DEFENSE**

43. The complaint is barred, in whole or in part, by the applicable statute of limitations.

**FIFTH AFFIRMATIVE DEFENSE**

44. Punitive damages are not recoverable from MTA or MABSTOA.

**SIXTH AFFIRMATIVE DEFENSE**

45. As Plaintiff was employed by MABSTOA and not the MTA, the MTA is not a proper party to this action.

**SEVENTH AFFIRMATIVE DEFENSE**

46. Based on an amendment to Public Authorities Law § 1266 (8), Defendants are not subject to claims based on the NYC Administrative Code.

**EIGHTH AFFIRMATIVE DEFENSE**

47. Should the NYC Administrative Code have applicability, it is applicable only to the extent that the Code duplicates rights and remedies that exist under the NY State Human Rights Law.

**NINTH AFFIRMATIVE DEFENSE**

48. Worker's Compensation Law provides the exclusive remedy for retaliation claims related to Worker's Compensation.

Dated: Brooklyn, New York  
December 18, 2007

Yours, etc.,

A handwritten signature in black ink, appearing to read 'Kristen Nolan', written over a horizontal line.

Kristen Nolan  
Francine Menaker  
Office of the General Counsel  
New York City Transit Authority  
130 Livingston Street (12<sup>th</sup> floor)  
Brooklyn, NY 11201  
Tel. (718) 694-5720/3891  
Attorneys for Defendants MTA,  
MABSTOA and David Collum

